Enforcement of Judgments in Macedonia: Problems and Proposed Solutions with a Comparative Perspective

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This paper is a review of the laws governing the enforcement procedure in Macedonia, combined with a summary of the current experience of practitioners in Macedonia involved in enforcing court judgments. Assertions made are based on interviews and research of literature and laws, but have not been empirically tested. It is highly recommended that this paper be followed by testing data from actual court enforcement cases. The importance for empirical testing, which by its nature can only follow such a survey of cited problems with the procedure, is discussed at the end of the paper.

I. Summary of Macedonian Enforcement Procedure

Enforcement is a separate procedure from the court litigation that produces the judgment. Specialized enforcement judges deal with enforcement cases, on a separate docket. The enforcement is based on an executive title, which can be a court or administrative judgment, or on what are called "authentic documents", which include checks, invoices, bills of exchange, etc. as described in the Enforcement Law[2]. A creditor first proposes enforcement, including method of enforcement, to the enforcement judge with executive title or authentic documents. An executive title, i.e., a final judgment, is automatically the basis for an enforcement order, without further review. For authentic documents, the judge reviews the documents and makes a decision on the creditor's claim, and issues an enforcement order specifying the amount subject to execution. An enforcement order will also specify the method for enforcement, including specifically identifying which of debtors' assets, bank accounts, wages/salary, real estate, personal property, etc. will be used to satisfy the judgment. Generally, the creditor collects information on the debtor's assets in proposing method of enforcement. If creditor is unable to find certain information, the court may assist. In case personal property is to be used to satisfy the judgment, the enforcement agent (bailiff)[3] will conduct an inventory of assets by visiting the debtor's home or premises, depending on whether the debtor is an individual or a legal entity. He will specify the assets to be subject to execution pursuant to the inventory.

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[2] Law on Enforcement Procedures, Official GazetteNo. 53/97, No. 21/98/59/2000 ("Enforcement Law")

[3] "Enforcement agent" refers to what is translated in Macedonia as "Officially Appointed Person" or "Official Person", and is understood to mean the court employee who performs administrative acts specifically for enforcement actions. The term "enforcement agent" is commonly used in literature in reference to this office in its many permutations, and is used here to more easily facilitate comparison with other systems.

Judgments may be enforced against an individual, or a legal entity. The basic procedure is straightforward. The court first issues the enforcement order, following an inventory of assets if it is necessary. The enforcement order must be served on the debtor for the process to begin. The debtor has 8 days from the time he receives the enforcement order to pay the judgment. After that, the court begins actions to enforce the judgment, or debt evidenced by authentic documents, are begun by the court. Pursuant to judge approval, the enforcement agent will take steps to seize assets, sell them, and distribute proceeds. If the enforcement is against a bank account a notice is sent to the appropriate bank, with instructions to freeze debtor's bank account. In the case of a legal entity, the debtor will have a bank account as it is a legal requirement for company registration. If there is insufficient money in the account, the bank will send a notice to the court and to the Central Registry. The Central Registry will search for all of the debtor's accounts in the different banks, and freeze those as well. For wages, a notice is sent to debtor's employer to pay the creditor the appropriate portion of debtor's wages, not to exceed 1/3 of debtor's salary. For receivables, debtor's debtor is notified. For assets, the appropriate public registry is notified of the enforcement order. If the enforcement is against real estate, a similar notice is sent to the appropriate real estate registry, banning transfer of ownership. If the real estate is not registered, an interim measure forbidding the debtor from transferring the property may be taken. For movables, if there is a pledge on the movable registered in the pledge registry, a notice of judgment interest can be registered on the property there as well.

If the assets subject to execution are real estate or movables, then they will be appraised for their fair market value prior to sale. Then an auction, in the form of a hearing at the court will be conducted 15 days after a notice is published in a well-circulated newspaper. The minimum bid at the first auction is the appraised or fair market value. If the first sale is unsuccessful, the price is lowered by an amount determined by the judge (can not be lowered by more than 1/3), the notice for auction is republished, and another sale is held. After the first sale, and after the second sale are unsuccessful, the creditor may take possession of the property for the minimum bid set for the 2nd auction. Creditors usually take possession in this manner. If they do not, they must wait three months of the second unsuccessful sale to attempt a further sale.

During the procedure, the debtor has the right to object at every stage, including issuing of the enforcement order if it was issued based on authentic documents, valuation of assets, sale of assets, and distribution of proceeds. If the first instant court, the enforcement court, denies the debtor's objection, debtor has the right to appeal. Though the law does not require the enforcement proceeding to stop due to a debtor objection or appeal, in practice such objections and appeals halt the enforcement. Third parties are also able to assert their rights in the properties sold or in the proceeds, and resolving such claims regularly delays the enforcement procedure. Sales are also often unsuccessful. Debtor fraud, through transferring or hiding assets, is also common. Serving the debtor is another difficult portion of the procedure.

The specific problems and recommended ways to address them are discussed in further detail below.

II. Details of Procedure and Problems

A. Procedure Controlled by Court; Limited Role of Enforcement Agents

1. Judges Control the Procedure

Judges control the proceedings. Administrative decisions are made at the judicial level. Involving judges appears to lead to greater analysis than is necessary, as is in keeping with a judge's generally understood role as an evaluator. In Macedonia, an enforcement proceeding involves almost as much judge time, and as many of the court inefficiencies, as the original trial. Though enforcement agents are responsible for the administrative tasks involved in executing a judgment, every step requires judge approval or judge direction to other parties. Even where judges have no control over the procedure, their involvement is excessive. For example, utility cases, a large part of most enforcement dockets, are dealt with by employees of the utility company, and not by the enforcement court generally.[4] Nevertheless, cases are filed with the enforcement court, and the judge deputizes utility company employees to deal with them.

2. Enforcement Agents are Limited

Enforcement agents in Macedonia have much less freedom to act that their counterparts in France, Germany and Sweden. Currently, they do not enjoy high status or professional recognition. They are court functionaries, with little power or prestige. They have knowledge due to their experience, but are reliant on the judge for permission to take action, and the creditor for the resources to take action.

a. Status

Enforcement agents in Macedonia are court employees and not independent agents. By law, private parties may not be part of the execution procedure.[5] The court may authorize other persons to act in the same capacity, in practice these are civil servants working with the utilities or tax authorities, not private executors. There is no special training or qualification for enforcement agents. Training is on the job. Enforcement agents tend to be experienced people who have been working at the court, and are familiar with its procedures, for many years. However, they are undifferentiated civil servants. They may move to other civil service posts.

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[4] The court may authorize a person to be an officially appointed person, or enforcement agent; in practice this is used to authorize utility company personnel to collect debt.

[5] However, there are private security firms, whose stated business is security (guards, etc.), who work in collection of judgments. They may do private investigations, and pressure debtors to pay. They have been known to use threats, intimidation, and other inappropriate means of collecting debts, and are not considered to be strictly ethical means of debt collection. Such actions are illegal.

b. Limited Power

Enforcement agents prepare most of the paperwork involved in judgment execution, and even do many of the evaluations involved when an inventory of assets[6] is conducted. They may undertake service of process after the initial effort by the court's service clerk has been unsuccessful, or in a difficult service case. However, the judge must sign each document. The enforcement agent has no power to legitimate documents. Neither does the enforcement agent take independent action without the judge's participation, or the creditor's assistance.

Enforcement agents also do not have sufficient powers and resources with which to fulfill their responsibilities. For example, there is no car at the court available to take an enforcement agent to debtor's premises when necessary. If a special trip is needed to serve an elusive debtor, or seize assets from a belligerent one, the creditor or creditors' attorney will take the enforcement agent in his or her car. The creditor will further pay the enforcement agent 400 denar for an extra action.[7] Even when serving papers on defendants, enforcement agents have no power to demand a lichna carta as identification. Police are available in the case of troublesome debtors, but limits on their availability cause delays. The extra step of requesting the judge to contact them increases the delay.

B. Determining Enforceability

1. Executive Title

In the Macedonian courts, a final administrative or court judgment is considered an executive title, an enforceable document. A notary public's document, which can be a contract for a loan, pledge, mortgage, sales or other commercial document that has a clause specifying it will serve as an executive title, should be executable without further analysis by the court, according to the law. The court must issue an enforcement order based on such executive title to commence proceedings.

Other documents that come in front of a Macedonian enforcement judge are called authentic documents. These include bills of exchange, invoices and checks. Invoices form a large proportion of enforcement cases. Authentic documents are often simple debt enforcement proceedings. A judge must review the documents and issue a decision on the amount owing to the creditor. Authentic document review takes approximately one month. An objection to an authentic document often leads to a new civil trial, pursuant to

[6] Inventory of assets is conducted when it is necessary to determine the debtors' assets available for satisfaction of judgment. This inventory is done by the Official Person, sometimes assisted by police or even the judge, at the debtor's premises. It can and often is done even before the court issues the enforcement order.

[7] This payment is not a bribe, but has been approved by court rules, even though it is not a fee specified by law.

Article 55 of the Enforcement Law, which allows the debtor to request a new trial for certain types of objections. Judges have complained that authentic documents are difficult to review and enforce.[8]

2. Judicial Review

It appears that the problem may be the application of too much scrutiny to the authentic documents. For example, a notary document is stated in the law to be an executive title, enforceable without further review. Notary public documents are carefully described in the Notary Law[9], and a notary, a trusted public servant, is certifying their authenticity and the nature of the debt. However, it is reported that judges tend to ask for further clarification when reviewing a notary public's document as an executive title. Judges are currently involved in a significant amount of analysis of rights that have already been adjudicated, or are well-defined in the law.

C. Delivery/Service of Process

Service of process, or delivery, is a difficult problem in all Macedonian court litigation, including in enforcement proceedings. Debtors can be difficult to find. They can obstruct service by refusing to identify themselves, or hiding. Time between attempts of service can be long, depending on the availability of the relevant court personnel. Normally service is conducted first by a court clerk. If he is unable to complete service, then the enforcement agent may attempt personal service. The creditor takes the initiative, picks up the enforcement agent, and transports him to the place where service is to be given. The enforcement agent is not empowered to demand identification from the debtor, or enter premises where the occupants bar his entry. Service can become a game of finding the debtor, and having someone present in the group trying to effect service that knows the debtor, and can certify to the enforcement agent that it is indeed the debtor who has been served.

Even registered legal entities who do not report changes of address to the company register can be difficult to serve. Article 5a attempted to address the problem. If delivery is ineffective, then the notice can be posted at the court, and after 8 days, the notice is considered to have been delivered, or properly served. While the intention is clear, in practice this provision has not improved the situation. First, it applies only to legal entities and registered professionals, who may reasonably be presumed to know to check a court bulletin board if they may be receiving notice of a judgment collection action. Article 5a does not apply to individuals. Moreover, in the case of a legal entity, if the address of the legal entity that is in the company registration is no longer valid, the company is likely defunct. Even if it does exist, if the creditor is unable to locate the address, only the bank accounts, locatable through the Central Registry, are available for execution, and in such cases, where the address is difficult to find, the bank account is

[8] These were sentiments expressed by some judges at a Macedonian Court Modernization Project training in early 2003.
[9] Notary Law, Official Gazette No. 59/1996, No. 25/1998, Article 41.

usually empty. Without an address, locating assets will be difficult, and with or without service, the action will not result in collection.

Delay in service can last several months. Moreover, the problem is potentially repeated for each document that must be served on the debtor, the enforcement order, the valuation, notice of sale, order on distribution of proceeds. Service, a mechanical, yet vital part of due process, is a significant reason for delay, often due to debtor manipulation.

Several recommendations for improvement of service of process are provided in the recommendation summary.

D. Objections and Interruption of Procedure

1. Too Many Objections by Debtor

There are numerous opportunities for debtors to object during an enforcement procedure. The Enforcement Law has at least 13 provisions that provide for a hearing. As hearings take from 15 days to 1 month to schedule, so many hearings add substantially to the length of the procedure. The debtor may object, requiring review by the court and possibly a hearing, after the enforcement order is issued, to the inventory of assets, to the valuation of assets, to the sale, and to the distribution of proceeds. If the first instance court denies debtor's objection, which is more often the case than not, the debtor has an automatic right to appeal to the appellate court. Moreover, there are no time limits imposed on resolution of debtor's objection. Therefore, each objection results in delays of one month to several months. Meanwhile, the asset in question may depreciate in value significantly.

2. Third Party Objections

a. Third Party Objections

Once the creditor begins to seize assets, third parties begin to assert their rights in the properties sold or in the proceeds. Resolving such claims regularly delays the enforcement procedure. Furthermore, third parties may enter their objections or assert their interest at any time up to the conclusion of the enforcement procedure. Third parties may raise objections to the choice of a particular asset, claiming ownership, or an interest, and may object to the distribution of proceeds after the sale. If the third party asserts ownership, he or she must provide evidence of the interest. If the judge does not see appropriate evidence, he or she may dismiss the claim, but the review causes delay. If the third party appears to have a claim, he will go to the general court to obtain a declaratory judgment. This will delay the entire enforcement procedure until his rights are adjudicated.[10] It has also been noted that newer, less experienced judges may give

[10] Enforcement Law, Article 65.

third party claims more deference than they deserve, often sending them to litigation to validate a claim based on no more than an affidavit. The third party may also appeal the decision of the judge on his claim, adding further delay, though this happens less often than in the case of the debtors, as the third party will incur a fee for using the appeals court, which he will have to pay.[11] Family members are especially likely to assert claims in the property, or deny debtor's ownership of the property. According to judges and attorneys interviewed, these claims are a delay tactic and rarely have merit.

b. Lack of Reliable Public Records

Where a third party interest is reflected in the appropriate register, such as the land cadastre or the pledge registry, indicating the nature of the claim and establishing priority, third party objections are not a large problem. They can be easily identified and located at the beginning of the enforcement on that asset, preventing later intervention and all the necessary adjustments and determinations that go with it. The public register provides easily accessible, reliable evidence. However, currently in Macedonia the public registries are incomplete, and do not record many types of interests. Therefore, third parties can assert claims not based on the public registries, and with varying types of evidence of ownership or other interest.

c. Lack of Notice to Creditors

Debtors are not required to disclose the interests of third parties in their assets, such as mortgages, ownership interests, or other rights to the assets. Public records do not yet record all such interests. Therefore, third party interests are presented to the court ad hoc, and dealt with one by one. Often a creditor may receive notice of an execution on an asset, such as real estate, in which he has an interest, only at the point of sale. Currently, in Macedonia, there is no systematic method of informing other creditors or interest holders of execution on assets in which they may have an interest. Debtor is not under obligation to disclose other creditors or entities with an interest in the subject property. Therefore, there is no orderly way of collecting information on creditors and other interests, and determining third party rights and priority at once.

d. Fraudulent Transfer

Many times third parties interfering with execution of judgments have accepted debtor transfer of the property, done in order to avoid its seizure by the creditor. Such transactions are fraudulent. The transactions can be unwound pursuant to the Law on Obligations, but require a full lawsuit which may take two years or more. If a debtor transfers assets after he has been forbidden to do so by interim protection measures taken by the court, he may face criminal penalties. However, many of the transfers occur before or in the absence of such interim measures. Moreover, without adequate records,

[11] Debtor also incurs a fee, but the creditor pays the fee to speed the proceeding and then deducts it out of the proceeds of the asset. The third party, however, will most likely be required to pay the fee or be sanctioned.

there may be no place to record a ban on transfer, leading to purchasers being unaware of the ban.

3. Judges Stop Procedure Most of the Time

This phenomenon is not a result of the law, except when an appeal is involved[12], but a result of judges' reluctance to stop proceedings. In almost every instance in the Enforcement Law where a debtor objection is allowed, the same provision provides that the enforcement will not be stopped unless otherwise provided in the law. Pursuant to Article 63, a judge may stop the enforcement at his or her discretion. Though a guaranty may be requested from the debtor to stop enforcement, this is rarely, if ever invoked. So though most of the provisions of the law enjoin an interruption, in practice, judges use one provision giving them discretion to stop the procedure, rather than the many that support not halting the procedure. It appears that the judges are more comfortable halting the procedure than continuing it. They appear to fear review, and the complications of refunding debtor's money in the case of error. This practice has the power of law, and is not illegal. However, it severely handicaps the creditor, and gives the debtor opportunities to delay.

4. Need to Transfer File to Appeals Court

Another reason that the procedure is halted is that when the debtor's objection is denied by the enforcement court, he has an automatic right to an appeal. Though the law does not require the enforcement proceeding to stop due to a debtor objection or appeal, such objections and appeals halt the enforcement for practical reasons. Due to the requirement in Article 346, paragraph 1 of the Civil Procedure Code, all litigation, including appeals, require the original court file with the original court documents in order to proceed. For the appeal to be heard, the entire file must be transferred to the appellate court. Therefore, the enforcement court cannot continue the procedure until a decision is issued on the appeal and the file has been returned to the enforcement court. Article 7 of the Enforcement Law attempts to deal with the situation by providing that for an appeal the court shall "reproduce the document (motion) and submit the transcript of the document (motion) containing the appeal to the appellate court." However, it does not go far enough in nullifying the Civil Procedure Code requirement, and thus, entire original files are regularly transferred to the appeals court.

E. Locating Debtor's Assets

1. Finding Information About Debtor's Accounts and Employment

Creditor will try to identify accounts or banks holding debtor's accounts through a prior relationship or a search of the company register, including the employer of the debtor, who likely pays debtor at the same bank where it holds its accounts. For a legal entity, the creditor may inquire at the Central Registry. For individuals, the court must

[12] See discussion below on practical reasons the proceeding is halted due to an appeal to the appellate court.

make the request on behalf of the creditor. Banks are sometimes reluctant to release debtor information to creditors or their attorneys, for privacy and customer protection reasons, but are generally compliant with requests from the court regarding judgment debtor accounts. Finding information on a personal bank account can be difficult. It can prove an obstacle to enforcement. Generally if the individual is employed by a large employer, he will have a bank account in the same place as his employer in order to receive his salary. When the bank account is found, it may not have funds, particularly in the case of an individual. In fact, it appears that the harder the account is to find, the more likely it is that it is defunct or otherwise not useful for collection.

Debtor's employment information, if he is legally employed, appears to be determinable without much difficulty. The creditor will often know based on a prior relationship, or will be able to discover the information easily through private investigation. Determining his place of employment may involve following the debtor to work, or other types of private investigation methods. Public records, such as tax records, are not currently available to determine such information.

2. Identifying Receivables of a Business

Business debtors should be required to disclose business receivables, if creditor wishes to execute a portion of the judgment on them. Currently no party in the enforcement process has authority to demand books. Further, debtor's books and records may not accurately reflect all the receivables based on current accounting practices.

3. Insufficient Public Records

a. Cadastre/Land Registry is Incomplete

Lack of adequate records not only makes it difficult to locate debtor's assets, it also makes it difficult to establish the debtor's ownership, and to establish third party interest in the assets. In Macedonia, the cadastre is in process, and not complete. Most apartments have not been entered in the cadastre.

Until two years ago, most land in Macedonia could not be owned.[13] Only the buildings could be owned. The developer who built the building had the only publicly traceable ownership interest in any given building. Therefore, apartments that are part of a complex had title traceable only to the construction contractor, who may be defunct. People keep contracts with developers, and successive contracts of transfer, as evidence of the chain of title leading to their ownership. Mortgages were kept with the relevant court or through a notarial agreement. Owners of buildings that were built without licenses did not have any public record of ownership.

[13] The Law on Building Land, Official Gazette No. 53, 12 July 2001, has changed that, and a significant portion of land in Macedonia is now in private hands.

Tapia[14], a remnant of the Turkish system for recording property, sometimes evidences ownership for property not in the cadastre. If the only evidence of the property's ownership is the Tapia, then any mortgage is on record with the court. Court records are available within a few days, but only tell the creditor whether or not there is a mortgage on the property. If there has never been any mortgage on the property evidenced by the Tapia, then the owner has the only evidence of ownership. In such a case, the only recourse a creditor has is to attempt to compel the debtor to produce the Tapia. Trying to obtain records that are held by the debtor is extremely difficult, if not impossible, as the debtor has no incentive to prove his ownership of property that will be seized. If a property is not recorded in either manner, and is outside the formal legal system, there is no way to establish ownership at a reasonable cost, or sometimes, at all.

The cadastre is attempting to address some of these problems. When property is recorded in the cadastre, ownership is clear. Recording is instantaneous. Mortgages are also recorded in the cadastre. Currently, there is a significant amount of property that is not yet registered in the cadastre. One estimate is that over half of the properties have been recorded. Moreover, there is no legal provision for recording ownership certain types of property, particularly buildings that were built without licenses, and thus have no public evidence of ownership. A municipality can take steps to formalize ownership interests of the apparent owner of a building without a license[15], but there is no systematic way to incorporate the properties into public records. These properties that are outside the formal legal sector ownership can be recorded but ownership interests in them cannot.[16] Therefore, they cannot be seized to satisfy the owners' debts, though owners treat them as their assets, even selling them.[17] In one case, a creditor wished to seize a debtor's building. He could not because it was built without a license and therefore there was no evidence of debtor ownership. Debtor sold the property, certainly indicating he controlled it and had all the indicators of ownership, though the creditor was deprived of seizing it.

b. Pledge Registry and Register of Leasing Established; Not Widely Used

Macedonia has a functioning pledge registry for movable property. It is governed by the Law on Contractual Mortgage and Pledge.[18] Pledges on all types of movable property, intangibles, stocks and bonds, hard assets, and even intellectual property can be recorded. Judgments are also recorded there. Currently it appears that only banks are using the pledge registry for loans. Businesses do not use it for business-to-business debt. The Register of Leasing is not used at all. It is not clear if leases are being recorded in the Pledge Registry.

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[14] Tapia records interests in land but not buildings.
[15] Law of Local Autonomy, Official Gazette No. 5/2002, Article 22.
[16] Law of Measurement and Communal Property, Alphabetical Register of Land Owners and Recording of Their Right to Real Estate, Official Gazette No. 27/86, No. 17/91, Article 54.
[17] This is done through contracts that are not recorded, result in no transfer tax, and are not official. However, the fact that such transactions occur is evidence of ownership.
[18] Official Gazette No. 5/31 January 2003.

4. Insufficient Power to Compel Debtor to Disclose Assets and Other Creditors' Interests

Article 28a of the Enforcement Law requires the debtor, when requested by the creditor, prepare an inventory of his assets. The inventory is reviewed at a hearing. Article 28a provides for sanctions in the form of fines to be imposed on the debtor if he does not produce the requested information, or fails to show up for the hearing. It appears that in practice, these fines are imposed. However, these are civil fines, and difficult to enforce and collect. The same provision in the law also provides for criminal sanctions for falsehoods by the debtor in providing the information. However, for criminal sanctions to be imposed, the creditor needs to approach a prosecutor to bring the charges. The extra step of approaching the prosecutor to bring the charges, is rarely taken by the creditor or the judge though false information is reported to be provided by debtors. These provisions are seldom, if ever, used. The Civil Procedure Code Article 233 also provides for a judge to impose sanctions, including up to one month in detention, from the bench, on "witnesses" for failure to appear or failure to answer questions. These sanctions could conceivable be applied to the debtor in an enforcement case, by an enforcement judge. However, it appears that these sanctions are not often used in enforcement proceedings.

Moreover, as discussed, debtor is not required to reveal the interests of others in their property. This prevents orderly determination of third party interests in debtor's assets.

Though provisions that would penalize a debtor for failing to provide truthful disclosure exist, they are rarely used. Therefore, debtors can avoid disclosure, or provide false disclosure, with impunity. They have little incentive to cooperate with the creditor in collecting the judgment, if they know they will not suffer adverse consequences.

F. Monetary Asset Seizure: Bank Account Seizure and Garnishment of Wages; Receivables or Other Monetary Claims

1. Procedure

As in many Western European countries and the United States, these are the two most common, and the most successful method of collecting monetary judgments. If bank accounts are one of the chosen assets for execution, the creditor will identify debtor's bank accounts in the proposal for enforcement submitted at the outset of the case, or at least identify the bank where the account is located and ask the court to demand the account number. Once the bank account is identified, the judge issues an order to the bank to freeze the account. This can be done before the enforcement order is served, which is a crucial reason that this method is often successful, as it does not provide the debtor with an opportunity to empty the account before collection. The process for garnishing wages involves notifying the bank holding the account where the debtor is paid his salary, if he is paid into a bank account, of the garnishment, and

notifying the debtor's employer of the garnishment, with instructions to either pay the creditor a portion of the salary, or to allow the bank to transfer the amount to the creditor. Employers, also, tend to cooperate with garnishment orders, as they face jail penalties for failure to comply. Garnishment is limited to 1/3 of wages. Despite the problems listed, overall, collecting from a bank account, if the debtor has one, does not appear to raise as many complaints as other methods.

2. Receivables

Legal provisions governing seizure of proceeds from receivables appear reasonable, and similar to provisions in many other jurisdictions. The biggest problem with receivables is identifying them, through debtor or debtor's books. Debtor is not usually forthcoming with books, and amounts can be difficult to determine, as described previously. There is currently no authority for any participant in the enforcement procedure to demand books. Debtor's books and records also may not accurately reflect all the receivables. Seizure of receivables is often used in Macedonia despite these problems.

3. Debtors May Not Be Employed in the Formal Sector

Much of Macedonia's economy remains in the informal "gray" sector. If the debtor's employment is in this informal sector, garnishing wages is not possible. Another problem with garnishing wages is that the rate of unemployment in Macedonia is quite high. If the debtor is unemployed, it is of course impossible to garnish wages. In such cases, creditors often suspend the proceeding in hopes of restarting it when the debtor finds employment.

4. Debtors Can Change Corporate Identity and Escape Seizure With Impunity

One problem with seizure on bank accounts is that when a company closes, and then reemerges with a new name and new corporate identity, there is no recourse to the new company for the old company's debts. There is no concept in the law of going after principals, or suing to have the new company declared a successor of the old and therefore liable for debts.[19] It appears that this maneuver is used by debtors to escape judgment debts frequently enough to elicit comment.

G. Liquidating/Selling Debtor's Assets

1. Obtaining Possession

[19] Under the Trade Law, those forming new companies are required to swear that they have not closed companies with unpaid debts. However, the only remedy for a falsehood by a principal of a company is a criminal prosecution, which would require a creditor to approach a prosecutor, and even in a successful case would result only in a criminal prosecution and no recovery for the creditor.

Obtaining possession of a debtor's assets can be difficult. In the case of movable assets, debtor may move the asset, or simply deny the creditor the ability to enter the premises where the assets are held. In the case of real estate, though he is obligated to do so, the debtor may deny prospective buyers the right to inspect the property. Prospective buyers often inspect an equivalent property in the case of an apartment building, or simply inspect from the outside, without entering. Debtor, or debtor's tenant, may also fail to vacate the premises voluntarily, in the case of real estate. Such noncooperation by the debtor leads to less buyers being interested in auctioned properties.

2. Auction Procedure

1. Valuation

Valuation of real estate is done by an expert appointed by the court. Movable assets are evaluated by the enforcement agent, unless Article 80 of the Enforcement Law is invoked to hire an expert. The valuation is to determine market value of the asset to be sold. Methods of valuation do not appear to be standard, or set forth in a way as to ensure consistency and uniformity. Judges choose evaluators, and some nepotism and irregularity in appointing evaluators has been reported. There is no standard method of identifying experts. Most experts are ex-officials at the former State Bureau for Experts now working in private sector firms providing valuation services. However, "experts" may also be recently graduated economics students with no valuation training or experience. Creditor and debtor may be consulted on the choice of evaluator, but they do not have official input. When one party objects to a valuation, a "superexpert", or second evaluation expert may be appointed. There are reported instances of valuations of real estate without a site visit, based on incomplete, outdated public records of the property.[20]

In addition, the value to be determined is a fair market value. This is not clearly defined, nor is the procedure set forth as a guide to evaluators. Judges provide the guidance on evaluations, and therefore valuation methods vary. In the normally understood sense, the fair market value is what an asset may bring being sold on the market in the ordinary course of events. In an auction, the asset will generally bring a lower price due to the urgent nature of the sale. There are developed methodologies for the different evaluations involved in determining fair market value and liquidation value.

2. Minimum Bid

At the first auction, the minimum bid is set at the fair market value determined at the auction. As stated above, this is an inappropriate minimum bid. At an auction, where immediate sale is the goal, one cannot presume "fair market" conditions. A quick sale will generally demand a lower price, or a "liquidation" price. Evaluators should be trained in determining a liquidation value, and should be required to present a liquidation

[20] In one instance, an apartment was valued without inspection. Records reviewed did not reflect that 20 square meters had been removed from the property by partition. The buyer objected to terms of sale, and after a 2 ½ year procedure, the court issued a partial refund, during which time creditors were not paid. The buyer is now suing for interest on the refund.

value along with the fair market value. The minimum bid should be set much lower than the fair market value, preferably at the liquidation value.

3. Transferring Ownership

Transfers of property, particularly real estate, are also problematic. The ownership transfer is generally successfully effectuated by the judge entering an order validating the sale, and providing the new owner the information needed to register his ownership in the cadastre. If the property is not listed in the cadastre, the court will issue a decision transferring the property. This is sufficient to evidence ownership. After the transfer of ownership is successfully recorded, however, vacating the debtor or his tenants from the premises is very difficult, and a long, time-consuming process. An entirely new enforcement procedure will be commenced to evict occupants, which can take a significant amount of time.

Another problem arises with foreigners. They can only own real estate on a reciprocity basis. This requires the Ministry of Justice contacting the foreign ministry of the foreigner's country, and renders such seizure impossible in practice. Therefore, a foreign firm will not be able to take the property after the second unsuccessful auction, as is the practice with most creditors. Foreign firms therefore face a significant disadvantage in extending credit secured with real estate collateral, and in enforcing their judgments.[21]

H. Distribution of Proceeds

Once the sale of an asset is completed, the court holds a hearing to determine the distribution of proceeds. The order of distribution, by priority, is:

1. expenses of sale, including court taxes, appraisal fees, and creditors' expenses
2. payment to creditors, in order of determined priority or in proportion to their claims, as determined by the judge
3. debtor, with whatever remains

The judge makes an order for distribution. In complex cases, one or another creditor may object. The appeals court may require the judge to change his decision or reconsider it. A newly issued decision raises the possibility of further appeal. These objections and appeals can significantly delay payment to creditors where there are many interests in the asset. This makes creditors wary of buying or taking as collateral assets that already have claims on them.

[21] Most foreign firms who regularly do business in Macedonia avoid this problem by incorporating as Macedonian firms.

Another problem appears to be that priority in payment of creditors is not clear. Creditors are not systematically notified of execution action on actions where they may have an interest. There is no process to establish priority of creditors in a systematic way. If there is a priority interest, such as a mortgage on the property, the judge will offer the creditor with priority an opportunity to take the property instead of the action-initiating creditor. Buyer buys with clean title.[22] Though a known mortgagee will be informed, there is no automatic right to payment based on priority. The creditor must assert his right. As there is no system of notice, creditors potentially may lose their bargained-for rights in a property due to another, lower-priority creditor's action.

III. Recommendation Summary

A. Reduce Judge Involvement in Enforcement Procedure

In an enforcement system, the rights, responsibilities and powers of each of the actors should be clearly defined. In the Macedonian system, the main actors, other than the creditor, are the judge, and the enforcement agent. Enforcement agents have the responsibility to complete service of process, inventory of assets, and preparation of many of the documents involved. However, the judge must sign each document, and if an enforcement agent needs support such as police assistance, only the judge is empowered to call the police amend arrange assistance, for example if a debtor is avoiding service, to call the police to demand identification, or if the enforcement agent needs police assistance in seizing assets. The involvement of the judge lengthens the procedure considerably, as the enforcement agent must first attempt the action, such as service of process, or seizure, and after an unsuccessful attempt, return to the judge, request that the judge arrange for police assistance or address whatever other issue the enforcement agent is not empowered to address. Judge involvement in every stage of the procedure is not necessary. Enforcement agents should be responsible for many of judges' current duties in enforcement cases.

1. Reduce recourse to court and opportunities for debtors to object, and eliminate access to the appeals court until the procedure has ended.

It appears from interviews with judges and attorneys that debtor's objections are often made with no valid supporting reason, but simply as a delay tactic. The law is very clear on appropriate reasons for debtors to object[23], so that any debtor objection that is not based on a valid ground should be immediately rejected. There should be no review if one of the legal bases for objecting is not in the debtor objection. There should be time limits, and review of the judge's decision should be allowed only in exceptional circumstances. Objections to rulings on objections should rarely, if ever be given serious consideration and should not halt an enforcement procedure. An appeal to a higher court for interim steps in the enforcement process is an extraordinary measure, and therefore

[22] Enforcement Law, Article 146-7.
[23] See Enforcement Law, Article 49, where valid objections by debtor are carefully listed.

should not be routinely available, but should be available only in extraordinary circumstances. The Civil Procedure Code should be amended at Article 364 to eliminate the automatic right to an appeal, at least in enforcement cases.[24] If the appeal cannot be eliminated until after the enforcement procedure, only the enforcement order itself, which includes the choice of assets, should be subject to appeal, until after the enforcement procedure is complete.[25] Any appeal should be immediately rejected if it raises a question of fact and not procedure. There should not be a full appellate court review without a serious procedural question. For the valuation, objections should be limited. If the debtor objects, rather than an appeal, a second appraisal may be warranted, to be paid for by the debtor.

If interruption of the procedure were more difficult, debtors would not go to the trouble of objecting so often. They may even be more amenable to settlement of their claims, if practice made it clear that they would not be able to delay enforcement indefinitely, and especially with frivolous appeals.

2. Reexamine Types of Cases in Enforcement Court

Currently a judge's role in a utility debt enforcement case is usually small, he simply signs the order. However, utility debts are a significant portion of enforcement dockets, requiring administration, if minimal. Utility companies should administer the debts without court involvement until there is a necessity for court action beyond a judge signature.[26]

3. Require Debtor to Pay Appeals Fees

Currently, in practice, when debtor appeals a denial of his objection, he submits the appeal to the appeals' court, and often does not pay the fee. Rather than rejecting the appeal for the nonpayment of the fee, the appeals court allows the case to lie dormant until the fee is paid so that the case can be reviewed. In practice the creditor pays the fee to allow the appeal to proceed, and avoid further delay in the enforcement. Debtor should be required to pay the fee, or forego the appeal. Article 141, paragraph 2 of the Civil Procedure Code should be amended accordingly. It should be born in mind that this appeal is after an objection has already been reviewed by the first instance court. Therefore debtor's rights are not likely to be prejudiced if the appeal is not heard. If debtor's human rights are of true concern, perhaps the fee can be waived in the case of indigent debtors, if they can prove that they are below the poverty line. Otherwise, if

[24] The only questions during an enforcement procedure should be the appropriateness of the procedure, asset chosen, sale method, etc, not debtor's liability. It is inappropriate to make the appeals court an arbiter of such details, they should be concerned only with abuse of process, and extraordinary cases. The overall fairness of the procedure can be reviewed after it is over.

[25] For a notarial execution pursuant to the Law on Contractual Pledge, debtor can only object by proving he paid, or appeal after the procedure is over to unwind the transaction.

[26] Alternative dispute resolution methods for such cases, and potentially others, is worth investigating, but beyond the scope of this paper.

debtor is truly interested in protecting his interests, he should pay the fee. Indeed, being forced to pay for an appeal may reduce the number of appeals by the debtor.[27]

B. Increase the Power and Function of Enforcement Agents; Reform of the Institution of Enforcement Agents

1. In other systems, enforcement agents have greater power and autonomy

According to the Council of Europe Recommendations[28], the duties of the court and the enforcement agent should be set forth in great detail in the law. Council of Europe Recommendations and the Stability Pact's judicial reform guidelines[29] also stress strengthening the role, status and training of bailiffs.

In other jurisdictions, enforcement agents, or bailiffs, generally have greater power. In France, Germany and Sweden, the enforcement agent has considerably more autonomy. They have the right to review certain titles for enforceability, to gather information on the debtor from public records, and to seize certain assets without court involvement. There are differences in the amount of power they have. In France, the bailiffs are called *huissers de justice*, and they are a longstanding, respected profession. They have the power to review documents for enforceability. In Germany, the *Gvz* is the main bailiff institution. They are independent, and can review documents not related to the seizure of real estate for enforceability; real estate seizure requires greater court involvement. In general, the enforcement agents have greater powers in relation to the courts than in Macedonia.

Where enforcement agents are not empowered, as in Spain, the system for enforcement is considered cumbersome and slow, as every step in the enforcement requires court participation. Interestingly, the Spanish system more closely resembles the Macedonian system than other European systems. In Spain the creditor's lawyer must work through the enforcement agent, the *procurador,* to approach the *Agente judicial,* or *Secretario judicial*, whichever court official is appropriate for the particular seizure

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[27] It has been suggested that instituting fees for debtor's objections may reduce the number of objections. It is not clear that this is the case. Before instituting such a fee, the true extent of debtor appeals should be determined through empirical research on court case files (discussed infra), and the effect of fees on court use in other jurisdictions should be researched.

[28] *European Committee on Legal Cooperation (CDCJ)*, 78th Meeting, (52nd meeting as a Steering Committee), Strasbourg, 20-23 May 2003, Draft Recommendation on Enforcement and Its Draft Explanatory Memorandum. (" Council of Europe Recommendation") The recommendations are not binding on member states, and are still in draft form, but reflect European standards on domestic systems for enforcement of judgments. The document is separated into Guiding Principles and a Draft Explanatory Memorandum ("Explanatory Memorandum").

[29] *Framework Document for judicial Reform in South Eastern Europe*, January 23, 2002, available at www.southeasteurope.org

action, for every step in the enforcement action. The Spanish system for enforcement of judgments is considered cumbersome and very slow.[30]

2. A stronger enforcement agent will be able to protect debtor's rights better

The institution of the enforcement agent plays a much stronger role in most Western European systems. Enforcement agents consequently enjoy a high professional status, and are held to high professional standards in these systems. In France, the *huisser de justice* is a profession dating to the 16th century, which can review title and conduct enforcement. In Germany and Sweden, other than creditors' lawyers, the enforcement agents are the main actors, and they collect information on assets, collect money from realization and sale, and disburse it. Qualifying for the office in these jurisdictions also requires dedication, including a background check, training, and examination.

If the institution of enforcement agent can be shaped to be a public servant, with public trust, who knows debtor's rights and the legal limits of the enforcement procedure, then enforcement agents, rather than the courts can bear a great deal of the burden of ensuring that the enforcement process runs smoothly. Though representing the creditor's interest through the very nature of conducting a collection, an enforcement agent with significant status and a defined role as a public servant with a responsibility to act properly, within the law, can sufficiently protect debtor's rights without the need for recourse to the courts for every action. For enforcement agents to have such status and responsibility, and the ability to fulfill the responsibility, the institution will have to be reformed. Enforcement agents will need a professional status, training, they will need to face liability for wrong acts, and will need insurance to make the liability meaningful. A strong, lucrative profession will to some extent police itself, and ensure competence of members to retain its credibility and status. Further details are set forth below.

3. In order to allow the enforcement agent to fulfill a greater role, their status will need to be enhanced.

    a. Qualifying should include a background search similar to the one done by notaries.

First and foremost, enforcement agents must inspire trust to be successful protectors of all parties' interests in a judgment collection system. They are performing a service that requires the public trust, as they will have the power to intervene in the lives of citizens, and will be making responsible decisions.

    b. Liability and Insurance

[30] Dr. Wendy Kennett, *The Enforcement of Judgments in Europe*, Oxford University Press, Oxford, UK, December 2000, page 79.

In order to empower enforcement agents, and at the same time ensure the rights of the parties, liability for improper acts is essential. The enforcement agent must be liable for damages caused by his inappropriate action, for example, improper seizure of an asset, or failure to follow through on an action, or failure to properly disburse funds after sale of an asset.

As these could be large amounts of money, insurance is necessary. It is meaningless to hold the enforcement agent liable if he will not be able to repair the damage. He must have insurance. As a further incentive to honesty, it may be wise to require the enforcement agent to fund or purchase the insurance, rather than just providing it through the state, as he will have an incentive to avoid liability in order to prevent increases in premium, or cost of bonds. It appears in many countries in Europe, bonds paid by the enforcement agents into group pools, often managed by enforcement agent professional associations, or private insurance, are used. In France, chambers of *huissers de justice* require members to contribute to a fund to cover professional liability. In Scotland, they must provide proof of liability insurance from an approved provider before receiving a commission. In England, bailiffs provide a bond of 10,000 pounds to obtain their certificates. The professional associations guarantee liabilities.[31]

Professionally, the enforcement agent must also be liable for improper acts. Discipline by a supervisory body, and sanctions, even loss of license, are an important part of the system. Damage to professional status or reputation can be an effective deterrent to improper behavior if the profession enjoys prestige and is profitable.

c. Education

The education of enforcement agents is essential if they are to develop into an institution that merits public trust. In many, indeed most jurisdictions in Europe, a law degree is necessary.[32] It may not be necessary to require a law degree for enforcement agents in Macedonia. An enforcement agent is a business actor who is simply more bound in day to day work by specific legal procedures, but is not necessarily an advocate. The goal of designing education requirements is not to limit access to the profession, as may be the result of a specific but not necessary requirement such as a law degree. The education requirement must be focused on producing capable individuals. Therefore, some demonstrated academic competence, followed by rigorous training in the specifics of enforcement procedure is recommended. Training in the legalities, types of assets, valuation, and most productive realization/auction procedures is essential. An exam to ensure proper knowledge is also recommended.[33]

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[31] See, Dr Wendy Kennett, *The Regulation of Civil Enforcement Agents in Europe*, 2001, published at www. cf.ac.uk/claws/staff/Kennett, for an excellent comparative guide on these elements, and other elements of the institution of enforcement agent.

[32] In France, Spain and Sweden, for example, a law degree is required. In Germany, secondary education, but not necessarily a law degree, is necessary. In all of these jurisdictions further training as professionals, and particular training as enforcement agents, is also required.

[33] Council of Europe Recommendations suggest examinations, paragraph IV. 3.

4. Enforcement Agents should conduct the review of executive title.

Enforcement agents, rather than judges, should review the initial request for enforcement. These are based on rights that have been adjudicated, or that can be determined quite mechanically. The law should more specifically describe authentic documents, enumerating the most common ones, specifying the evidence of nonpayment required for each one. The Council of Europe Recommendations require[34] that the enforcement law prescribe an exhaustive definition and listing of enforceable titles and how they become effective. The Enforcement Law does set forth such a list. The list is detailed, but proof of nonpayment should be set further in greater detail.

A more specific list of documents, with well-understood standards for authenticity, and evidence of nonpayment, in Article 21 of the Enforcement Law, will enable enforcement agents to review certain titles for enforceability with specific legal guidelines. Judges' time can thus be reserved for more complex cases that require further analysis. Such freedom of enforcement agents to review titles seems to be a characteristic of more efficient systems of enforcement, such as in France, Germany and Sweden.[35] Allowing enforcement agents to review the documents may speed up the enforcement procedure. It is also an important part of developing the institution of enforcement agent.

5. Macedonian enforcement agents should be deputized with more police powers, and should be more autonomous vis-a-vis the judge.

Judges' role in the current system of enforcement should be limited to resolving disputes. The administration of execution should largely be the job of the enforcement agents. Having to return to the court for every action, even asking the police to accompany the bailiffs to the debtors' premises or to seize property slows down the enforcement, and creates two steps in the process where one would suffice. The enforcement agent, as an official of the court, should be capable of taking such steps on his or her own.

Specific powers that should be granted to the enforcement agents are the powers to demand identification for service of process[36], the authority to issue enforcement orders at the inventory of assets without a judge's presence, and the authority to decide

[34] Council of Europe Recommendations, III.2.b.
[35] In all three jurisdictions, the enforcement agents may review certain titles for enforceability. *Huissers de justice* in France have the greatest freedom, German *Gvz* can review title when it is not related to real estate, which is reviewed by the *Rechtspfleger,* another type of enforcement agent at the court. In Sweden, the *kronofogde* has the right to give summary judgment in certain cases. Kennett, *The Enforcement of Judgments in Europe*, pages 87-89.
[36] Discussed in greater detail in the section on service of process.

which assets are suitable for execution.[37] In service of process, especially, their role and powers should be enhanced.

6. Compensation That Reflects Performance, and Also Responsibility

Compensation must be structured to provide an incentive to the enforcement agent to recover money. Targets for collection, and functioning within a budget, as a part of performance evaluation can be an incentive. Another possibility is to combine compensation and promotion possibility through targets/budgets as incentives for performance. The Council of Europe recommendations recognize[38] that adequate remuneration for enforcement agents is a necessary component of maintaining their status[39], which should be high in accordance with the function they serve. In addition, the explanatory memorandum, while not specifically prescribing commissions, does state that "States should consider ways of motivating enforcement agents when deciding on the level of autonomy they may exercise in their work." Motivating enforcement agents is mentioned again when remuneration is discussed. Allowing enforcement agents to earn a commission based on successful collections will enhance their autonomy and provide earnings that will make the job desirable and profitable, and thus attract and retain capable enforcement agents in the court system.

Compensation for enforcement agents should have a built in performance-based component (a commission or bonus), an incentive efficiency. The current system of paying an agent 400 denari recognizes the need for an incentive. However, the 400 denari are paid only at the completion of an enforcement action, which is infrequent. Compensation that awards bonuses based on amount collected by an enforcement agent are an incentive and also recognize the commercial, rather than judicial nature of the enforcement agent's work. As current legislation governing civil servants would not allow this, a special compensation scheme for enforcement agents should be set forth in the Enforcement Law, or in whichever law sets forth the requirements of a stronger enforcement agent.

In France, there is a complicated structure of fees for *huissers* developed over the centuries, which combines fixed fees for engagement and a percentage of the money recovered. In Belgium there is a graduated scale, larger claims bring larger fees, and there is some allowance for a percentage of amounts collected in auction. In Germany, there is no percentage, but a salary, fee and structure to cover expenses, but a very small proportion of earnings depends on their recoveries. The variations are many. What is important, is 1) provide an incentive for performance, i.e., respect for legalities and debtor's rights and recovery for creditors and 2) to ensure that enforcement agents do not undertake unnecessary procedures at the expense of the creditor or debtor. The

[37] Debtor will have a right to object if the assets exempted violate his rights. Or he could simply be limited to objection when the asset is actually seized.
[38] Council of Europe Recommendations, IV. 7, and paragraph 53 in the Explanatory Memorandum
[39] Explanatory Memorandum paragraph 56.

combination of compensation, liability and insurance should therefore be considered carefully, with reference to the experience in other countries.[40]

7. Supervisory Body

To develop a new profession, a body to govern it, and maintain ethical and professional standards, will be necessary. The supervisory body will be responsible for maintaining adequate training and qualification verification, perhaps administering insurance, and overseeing the proper functioning of enforcement agents. The body should also be responsible for undertaking disciplinary proceedings against enforcement agents, and revoking licenses where necessary. The supervisory body must maintain the integrity of the profession. The body can be a department of a government agency, or a separate administrative body that answers to a government body. Professional associations are often employed to regulate and discipline their own members. In France, the *huissers,* as an independent profession with a long history, are governed by professional associations that enforce the legislation and regulations governing the profession, control insurance/bonding, and issue the licenses. Belgium's system is similar. In Germany, enforcement agents' office activities, and books, are subject to the regular supervision of the judge under which the enforcement agent works. In Sweden, where the enforcement agents are civil servants, the Enforcement Authority is responsible for administration of the profession, though a judicial ombudsman also takes part through its role in supervising civil servants. The Tax Board in Sweden, where the Enforcement Authority is housed, annually visits and inspects the Enforcement Authority.

As is evident from comparison, there are numerous ways to regulate and maintain a profession of enforcement agents. Careful consideration should be given to the alternatives in determining the best way for Macedonia.

8. Costs

It is important in developing the institution of enforcement agent, to bear in mind that the cost of using them should remain reasonable, so that they are accessible to parties. Costs, to the state, and to creditors and debtors, must be considered in every stage of development of enforcement agents. For example, in the UK, certain aspects of the enforcement procedure, including cost of some personnel, can inhibit actions. In developing the enforcement agents in Macedonia, potential costs should be analyzed. Enforcement agent institutions have been developed in transition economies with success. The experience of some of those countries may be worth investigating.[41] In Macedonia, the functioning of notaries, which is reported to be effective and affordable, is also worth studying.

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[40] See, Dr Wendy Kennett, *The Regulation of Civil Enforcement Agents in Europe*, 2001, published at www. cf.ac.uk/claws/staff/Kennett, for an excellent comparative guide on these elements, and other elements of the institution of enforcement agent.

[41] Slovakia, and its relatively new institution of executors, is one example.

C. Empower Judges to Refuse to Interrupt Proceedings for Objections and Appeals

1. Education of Judges

It appears that judges enforce the one discretionary provision allowing them to stop proceedings, rather than the numerous provisions in the law which provide for continuing the procedure. First, this statement, which was gathered by interviews with attorneys, judges, and bailiffs, should be tested by empirical research on court files relating to enforcement procedures.[42] But assuming it is true, the reasons why execution judges are reluctant to let an enforcement continue in the face of a debtor objection should be explored.

The Council of Europe Recommendations in III. 1. f. specify "there should be no postponement of the enforcement process unless there are reasons prescribed by law." Postponement may be subject to review by the court." Judges must be empowered to follow the law and refuse to interrupt a procedure. It is essential that judges are educated on not only the law but their role as economic actors, and the role of enforcement in the market. They must understand the impact of their favoring interruption over continuation, even if interruption feels more comfortable. The creditors also have rights. They must see the "forest", or overall successful enforcement procedure, rather than only the "trees", the individual steps in the procedure.

Lack of understanding on the judges' part, and often, even of knowledge of the provisions in a new law, lead to uneven enforcement, and even enforcement of old laws. Judges should have ready access to new laws, and should have interactive trainings. They should discuss with each other the impact. Particularly, appeals' judges and lower court judges should discuss the law together, to promote consistent application. They should also hold discussions with the legal community.

Further, appeals' courts should publish guidelines for lower courts based on their decisions. Such guidelines are not precedent, but are helpful in recurring situations where the law is not clear. The Supreme Court publishes such a book. The appeals' courts hear many more cases, making their guidance potentially more specific and helpful.

Education should not simply present the law, but the bigger concept of the intended functioning of the system. Judges will be empowered to see their role in the system. Inaction is action, therefore they should be trained to evaluate the economic

[42] Often empirical research disproves "conventional wisdom" on court practice, and on reasons for system inefficiency. See Linn Hammergren, *Uses of Empirical Research in Refocusing Judicial Reforms: Lessons from Five Countries,* World Bank, 2002. For example, in a study conducted on the collateral execution judgment files at a district court in Mexico, study of the case files revealed that there actually were not excessive numbers of appeals, though "the conventional wisdom" held debtor appeals to be a major stumbling block to execution of such judgments.

consequences of their action, whether in the case of a debtor's objection, or creditor's aggressive tactics.

Another example of how education can reduce delay is training judges to quickly review notary documents for authenticity, as they seem to question them even though they are executive title under the law. Training on reviewing public records, records of ownership, would also facilitate faster resolution of third party claims.

Training judges on the law, its purpose, and most importantly, methods of implementation, will empower them to conduct a more efficient and fair process.

2. Legal Changes

a. Stop Transfer of File to Appeals Court

Currently, the latest amendments to the Enforcement Law[43] allow that a copy of the motion and objected to order be sent to the appeals court for review. However, it is not specific enough in negating the Civil Procedure Code requirement that the entire file be transferred. This provision should be amended so that a copy of the motion and objected-to order be sufficient for appellate review. If necessary, the appellate court should have access to a copy of the file. The need for the original file to be transferred should be explicitly eliminated in the law, in both the Enforcement Law and Civil Procedure Code.

b. Reduce Appeals

As stated in another section, the recourse to the appeals court should be reduced. Limiting appellate review until the end of the transaction may make lower court judges more willing to look at the larger transaction, rather than the individual procedural steps. It may facilitate analyzing the "forest" rather than the "trees".

c. Allow Appeals by Creditor for Delay

The Council of Europe Recommendations in III. 1. f. specify "Postponement may be subject to review by the court." It may be worth considering adding a right to the Enforcement Law for creditors to appeal delays of the procedure. Judges may then feel empowered to balance creditors' and debtors' rights, as either may appeal, and review may consider either side.

d. Empower Enforcement Judges to Decide Objections in the Case of Authentic Documents

[43] Enforcement Law, Article 7.

Article 55 of the Enforcement Law allows recourse to a civil trial in too many cases. Invoices, or simple debt collection proceedings should not be subject to lengthy trials on such a regular basis. Article 55 should be amended to expand the types of cases that enforcement judges may decide without resort to trial. Amendments should specify cases that an enforcement judge may decide.

D. Protecting Debtor's Rights

Generally, the debtor should be protected from fraudulent action. His right to object to actions taken by the creditor does provide this. In fact, the Council of Europe recommendations mandate recourse to higher authority when necessary. However, the number of debtor objections allowed makes the procedure very cumbersome, and overly formalistic.[44] As his debt has been established, his only objections can be to the procedure employed. Instituting enforceable fines for creditor fraud, and liability for enforcement agents for inappropriate execution, will serve as a check and balance on debtor's rights at the stages of identification of assets, valuation, and sale.

1. Exemption of Certain Assets

In shaping enforcement procedures, it is important to not only ensure a creditors' right to collect on a judgment, but also to protect debtors from abuse, and even when abuse is not involved, to protect certain assets of the debtor necessary for living or sustaining the business. The Council of Europe recommendations require this, and most West European countries also require some level of debtor assets which cannot be attached and sold. The Macedonian Enforcement Law also provides adequately for protection of certain of debtor's assets. There is some lack of clarity on what constitutes survival, but at the current time, this may be more a function of the economic situation than actual manipulation of the provisions. Often, assets subject to exemption are all that the debtor has. This reality will change as the situation improves. Where there is a question, judges and enforcement agents should have guidelines, developed either through their collective experience, or written into the law.

2. Debtor's right to object

All reviews of European standards of enforcement reflect a rightful concern with protecting debtor's rights in the course of enforcement proceedings. The numerous opportunities for a Macedonian debtor to object to enforcement actions reflect an attempt to address this concern. However, in Macedonia, the numerous hearings come at the expense of efficiency, and a creditor's right to a speedy recovery of a judgment.

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[44] A recent World Bank study which studied 109 countries' contract enforcement systems found that formalistic court procedures, including the ability of debtor to appeal and the cessation of enforcement action due to an appeal, led to much less efficient court proceedings, and longer resolution time for enforcement procedures. *The Practice of Justice*, by Simeon Djankov, Rafael Law Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer, World Bank, May 2003.

Constant resort to the courts is a proven formula for delay and inefficiency for enforcing judgments.[45]

In the case of a claim, the debtor has litigated the claim, and his rights are not in question. In the case of authentic documents, one objection to the initial ruling of the judge, the enforcement order, should suffice. The further objections allowed, at the stages of identifying property for execution, valuation[46], and sale, are unnecessary. The debtor may object at the end of the proceeding, after the sale, and unwind the transaction if it is necessary.[47] The rare cases of changed circumstances invalidating debtor's obligation to the creditor are well-described in the law[48], and are uncommon.

It should be remembered that creditors have rights as well. False claims should result in fines. Stringent requirements for documentation will deter fraudulent claims, and will also prevent claims if the party knows that not only will he or she not prevail, but that they will not even gain the benefit of a delay from objecting. Currently, a petition objecting to an authentic document requires an explanation but not necessarily proof, in Article 55. Article 55 should be amended to require proof.

All of the recommendations presented can be adopted without compromising the debtor's rights. The Council of Europe Recommendations[49] require access to the courts during the enforcement procedure, but this access can be limited to resolving real disputes, rather than the court being the main actor. The same recommendations suggest preventing use of the procedure for excessive delay.

3. Hold enforcement agents and creditors liable for violation of debtor's rights; Professional Enforcement Agents as protectors of debtor's rights (quote Kennett article)

As enforcement agents' status is increased, they should bear an increased responsibility in case their actions are improper. The Council of Europe Recommendation[50] suggests that where an enforcement agent is alleged to have abused his or her position he should be subject to disciplinary, civil and/or criminal proceedings so that the allegations are investigated fairly, and, if abuse is found, that the enforcement agent will be subject to appropriate sanctions. The purpose of this recommendation is to give the enforcement agent reassurance that false allegations will be dismissed, and the debtor confidence that he or she has redress against an enforcement agent's unfair action.

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[45] *The Practice of Justice*, by Simeon Djankov, Rafael Law Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer, World Bank, May 2003. Discussed infra.
[46] Allowing debtor to provide a second valuation, rather than simply objecting, may be a way to protect debtor's rights that should cause less delay.
[47] In the procedure for notary execution in the Law on Contractual Pledge, debtor may only object in the beginning to insist he has already paid, and then appeal at the end of the procedure.
[48] Enforcement Law, Article 47
[49] Council of Europe Recommendations.
[50] Explanatory Memorandum paragraph 59

In the case of a creditor, his abuse of the debtor should be subject to civil and criminal sanction, with similar high standards for investigation as set forth for enforcement agent misconduct. This will give the debtor comfort that there is a remedy for him if he can prove creditor misconduct. Only real economic loss to the debtor, which is not the result of the rightful debt, should be compensated, and only true harassment or intimidation of the debtor should lead to sanctions. Debtor should prove the claim, rather than requiring creditor to disprove it. The court should not relitigate any issues that are settled. Only the execution procedure itself should be scrutinized. Safeguards must be developed to prevent abuse of this ability.

Most countries have sanctions for both enforcement agents and creditors who misuse their power or take abusive action. Establishing a system for liability insurance, as described below, will contribute to the feasibility of enforcement agent liability.

E. Improve Service of Process Procedure

Enforcement agents, and preferably also court clerks given the duty of service/delivery, should have the power to demand lichna carta for identification during service of court papers. Further, they should be able authorized to access offices, official buildings, and even residences upon presentation of identification as court officials deputized to serve documents. Service should be allowed in any place where the process agent[51] can find the debtor. Currently, Article 129 of the Civil Procedure Code limits service times and places. If time limits are necessary, they should be expanded greatly beyond working hours, possibly any time but late at night. Moreover, the delivery should be allowed to be done anywhere that the process agent is able to find the debtor. Changes should be made to the Civil Procedure Code, or if that is not possible, to the Enforcement Law to allow the broader service recommended for enforcement orders. Article 123 of the Civil Procedure Code, which describes service on legal persons, may also be expanded to serve officers or principals of a legal entity at any place they are found. The process agent should be allowed to access information on citizens from government information sources such as tax and employment records, and other relevant records, if initial attempts at service are unsuccessful. Delivery by accelerated post, where a return receipt showing the successful delivery is received, should also result in effective service. Methods for service by fax should also be considered. Email as a service tool has been considered in some jurisdictions, but there have been strong objections due to the inability to confirm receipt or ensure confidentiality, among other problems. Email may be considered for service of later documents in the proceeding, as further described below.[52]

After the enforcement order initiating the proceeding is delivered, the debtor is on notice as to the enforcement action and its commencement. He is also on notice as to the exact assets that will be seized and sold. Debtor should be under obligation to inform the court, after proceedings have begun, of a change of lawyers or change of address for

[51] the enforcement agent or the court clerk, as the case may be

[52] Many of these recommendations were made in 1999 by a working group representing the Ministry of Justice, the Bar Association, and the Supreme Court.

service if debtor is unrepresented. Debtor should be allowed and even encouraged to provide other methods of contact, such as a fax number, P.O. box, or email. For other actions in the proceeding, such as valuation, sale of assets, and distribution of proceeds it may be sufficient after unsuccessful mail or other delivery of documents to employ the method of service described in Article 5a, or if the debtor has a lawyer, service between the debtor's and creditors' lawyers should be sufficient. Again, this is for follow on actions. A debtor who is interested in the disposition of his assets can reasonably be expected to check on the progress of the litigation if he is otherwise unavailable for service. Article 5a could be amended to allow that method for actions in an enforcement proceeding where debtor has failed to inform the court of a change in address after successful service of the original enforcement order.

Service methods and standards vary greatly in other jurisdictions. In many countries, enforcement agents act as process servers due to the close link between service and enforcement. In France, *huissiers de justice*, the centuries-old professional enforcement agents, act as process servers. In fact, the *huissier* serves the debtor prior to court notification. The court is notified of the action when either of the parties send a copy to the court registry. In some states, the initial document, the one instituting the proceedings, is considered important enough that the court bears responsibility for serving it.[53] Afterward, service between lawyers is the norm. Service on debtor wherever he may be is also the norm, except in Spain where delivery must be at the debtor's domicile[54]. Postal service often requires proof of delivery, such as a return receipt. In Germany, the document is drawn up by the creditors' lawyer and then served by the court after the court deems the document accurate and appropriate.[55] In England, though the court may be responsible for serving the initiating document, it may send a notice of non-service to the creditor, and then the creditor is required to complete service. Once proceedings have been instituted, service between lawyers acting for the parties is the norm, in France and Germany, and other countries as well.

F. Impose liability on both debtors and creditors for fraud

1. Expand Debtor's Obligation to Disclose Assets

Debtor's obligation to provide an inventory of assets in Article 28a of the Enforcement Law should be expanded. He should be required to provide a full accounting, and to indicate other creditors that may have an interest in different assets that are chosen for execution. Debtor should be required to disclose receivables when requested. He should also provide his books and records to the enforcement agent support his statement. The requirement will have to be added to the law, as it is not

[53] This is the case in Germany. However, this does not suggest extra efforts or special procedure, though the court may take responsibility, it may still simply use the mail service, or employ an enforcement agent.
[54] As previously stated, Spain's system for civil judgment enforcement is considered inefficient. Even in Spain, however, if there are multiple addresses listed for debtor, he may be required to provide the court with the proper address for further communication.
[55] A similar approach is taken in Austria, Italy, Spain and Portugal.

currently provided. As accounting standards improve, books and records will be more reliable.

Moreover, the debtor should be subject to questioning, in a hearing so that he is under oath, by creditors and the enforcement agent. Such disclosure and interrogation is the norm in Austria, Denmark and Germany. In Germany, as discussed below, even makes a public record of the information gained in the interrogation, for the benefit of future creditors, and to avoid the court having to repeat the procedure.

2. Impose fines and criminal sanctions on debtors for failure to disclose, or for abuse of the procedure and on creditors for abuse of procedure

The Council of Europe Recommendation provides in III.d. that "defendants should provide up-to-date information on their income, assets and on other relevant matters."

The system for criminal and misdemeanor fines in Macedonia appears effective.[56] Therefore, if the debtor acts fraudulently in hiding assets, a criminal fine should be imposed. If parties know they are enforceable, with jail as the penalty for failing to pay, they should promote more honest behavior on the part of creditors, and more cooperation on the part of the debtor. Under the current enforcement law in Article 28a, debtors can be held liable for the penalties for making false statements to a court, a criminal offense. As the law stands, though the debtor is liable, the creditor would need to take the extra step of asking a prosecutor to prosecute the debtor. This does not happen in practice. Instead, the enforcement judge should be empowered to impose the criminal fine on the debtor, to make the sanctions more feasible, and so that they are an effective deterrent to debtor misrepresentation. Section 233 of the Civil Procedure Code, which allows detention for a witness who fails to appear, or to provide adequate information, should be expanded to specifically include recalcitrant judgment debtors in enforcement proceedings.

Detention for debtors who fail to disclose assets is present in other Western European systems. In Germany, a debtor who is dishonest in or fails to disclose his assets may face imprisonment and a fine. In Denmark, also, a debtor will face a fine or imprisonment for dishonesty in disclosing his debts.[57]

An alternative is to enforce currently existing civil fines in the Enforcement Law and Civil Procedure Code for debtor noncooperation.

In instituting fines, the principle of proportionality should be born in mind. Council of Europe Recommendations in II.4.: "[A]ttempts to carry out the enforcement process should be proportionate to the claim, the anticipated proceeds to be recovered as well as

[56] Law on Misdemeanor, Official Gazette #15, April 3, 1997, Article 15, reportedly with jail as the penalty for nonpayment, criminal and misdemeanor fines are imposed and collected effectively in Macedonia.
[57] Kennett, *The Enforcement of Judgments in Europe,* pages 105-6.

the interests of the defendant." In imposing fines, they should be proportional to the size of the claim. Proportionality may also help to prevent abuse of such fines.

3. Fraudulent Transfer

Transfer of property by debtors to third parties to avoid seizure by creditors is a common practice, not only in Macedonia, but by debtors everywhere. Such actions are considered fraudulent transfers in most systems. However, currently, this practice can be undertaken, leaving the creditor with legal recourse. A creditor can unwind the transaction pursuant to the Law on Obligations through a long process and an entire court trial, which may take 1 or 2 years or more.

Currently, it is difficult to prove a fraudulent transfer. Part of the reason is insufficient records. A ban on transfer cannot be recorded effectively if the public registry is not being used to record ownership of the asset. Moreover, a subsequent purchaser, who is generally protected from having his transaction unwound if he did not have notice of the restriction, has no reliable way to find out if the property is subject to court action. An effective record, however, can not only record bans but also trace the time of transfer to the day or even hour, providing stronger evidence that a transfer was fraudulent.

Legal provisions should also be strengthened to allow a fraudulent transfer to be prosecuted as fraud, including not only unwinding the transaction but sanctions for the debtor and transferee who engage in such activities. The burden of proof for a fraudulent transfer and quick, civil method for unwinding it should be provided. Provisions in bankruptcy laws, including Macedonia's, especially those that presume transactions entered into shortly before judgment, for a period of three months or so are fraudulent, are appropriate models. Also, the company law or other appropriate law should provide that companies that close and reopen under a different name will be scrutinized for fraudulent actions. Models for such scrutiny are available in many countries' company laws.

G. Notice to Creditors; Determining Priority

As previously discussed, there is no process for discovering the interests of third parties in an asset prior to execution. Debtors are not required to disclose such interests, and public records do not yet record all such interests. Therefore, third party interests are presented to the court ad hoc, and dealt with one by one. Often a creditor may receive notice of an execution on an asset, such as real estate, in which he has an interest, only at the point of sale. A system for notice to other creditors is crucial for preventing the delays caused by numerous third party interests that are currently asserted in a Macedonian enforcement system. Further, maintaining systems of priority is vital to maintaining a system with integrity, where a creditor cannot usurp the rights of another creditor simply by being the one to act first. For a system effectively respect creditors' rights, including their priority, reliable notice systems are essential.

In addition to the inventory of his assets, debtor should be obliged to provide information on other creditors, and interest holders, including third party or family ownership interests, in assets identified for seizure. Identification of other creditors is crucial to providing notice to other interest holders and determining their respective interests in an orderly manner, as further described below. Debtor is in the best position to reveal others' interests. Article 28a should be amended to include this new requirement. Penalties for failure to disclose or falsehoods should apply to this requirement.

Public records, also, should be reviewed to determine other potential creditors. Then a single hearing, notified to all the creditors and interest holders, should be held to determine their priority.

The system of notice to creditors will require 1) new provisions requiring debtor to provide information on all stakeholders in the property, including family members, 2) enhanced public records and 3) clearly defined priority interests in the law and education for judges on determining priority of interests. Requirements for debtor disclosure are discussed above, and for enhanced public records below. Priority appears to be well-defined in Macedonia, on a first in time, first in right basis among creditors, and in proportion to ownership interest among family members or other co-owners of property.

H. Continue Improvement of Records, and Increase their Accessibility and Authority

Good records are essential for proper enforcement of judgments. One of the major thrusts of the move to record property should be to phase in the requirement that interests be formally recorded, or not be recognized. Laws should broaden the ability to record interests, including tax liens, and any other interest that may attach to a property. Additionally, all real property, immovables, should be formalized. Pledges that are not recorded, once there is an ability to record them in the cadastre or pledge registry, should not be honored, or should be honored after other creditors are paid. Public records must become the exclusive and final authority on property interests. Improving records will allow judges to quickly deny any interventions and objections when they are not supported by records in the appropriate public registry.

For records to be useful, they must also be accessible. To protect the debtor, in other jurisdictions, often access to the records is limited to the enforcement agent, though sometimes information is more public. In Sweden, the enforcement agent has access to debtor's tax records. In Germany, debtor's financial information may be available to creditors if he has been interrogated before as part of enforcement proceedings.

1. Cadastre Improvement

Work on the cadastre should continue and be given high priority. It is essential that there are reliable records for property for the enforcement system to work efficiently.

The current work on the cadastre is a good start, and should be continued, but the process needs to be expanded and enhanced. The gaps in the current laws governing the development of the cadastre and recording of property should be amended so that all property may be formalized. It appears that the current law does not adequately provide for recording ownership interests in properties that were built without a license, or were outside the legal system when built, and therefore do not have standard documentation. The laws should be amended to create a system for formalizing ownership of such properties, as they are valuable assets. It should not be left to the municipality. Until the law can be amended, the municipalities should be encouraged to formalize as much property, recognizing the appropriate owners, as possible.

2. Improve Functioning of Pledge Registry

And all interests in movable property, including tax liens or claims of a family member, either ownership, or a lien for securing alimony, or other interests, should be indicated. Financial leases should be registered in the Pledge Registry as such, as an encumbrance on the debtor's property, even if the ownership of the property remains technically with the lessor due to the financing mechanism, or the Register of Leasing should be required to be used for leases, whichever is easier for creditors.

3. Registry of Judgments

No matter how well the cadastre and pledge registry function, creditors will not necessarily be able to ascertain sufficient information regarding a debtor's assets based on these two registries. These two registries only reflect debts secured by pledges of certain properties of the debtor. A creditor, even a judgment creditor, cannot determine if the debtor has other debts that may be attached to his property as enforcement proceedings continue. Neither can one judgment creditor guess how many judgment creditors may be seeking debtor's property simply by searching individual property of the debtor that is registered.

A registry of judgments would be a list of debtors who owe judgments but have not paid. They could take their name off of the list by satisfying the judgment creditor. One reason is to provide notice to creditors of the debtor's obligations, so that creditors may better assess debtor's liabilities when deciding whether to extend credit, in the case of a lender, or how to pursue debtor's assets, in the case of a judgment creditor. While pledges on particular assets may indicate only the encumbrance on that particular asset, a judgment may indicate that any of debtor's assets, including his salary, is subject to seizure. Creditors' rights and effective judgment enforcement are intimately related.

A further reason to create a registry of judgments is to simplify the determination of creditors who may be entitled to proceeds from property. It will make notification of other creditors more effective, as they will be easily found by searching the debtor's name. It will also establish the order of the creditors. It should be noted that in relation to real estate or movables, creditor priority should be determined strictly by the order in the pledge registry or cadastre, as appropriate. Any creditors that have not registered

their interests there should be paid after such creditors. Therefore, the judgment registry should not in any way upset the priority of creditors who have taken the steps to secure their position of priority.

Another reason is to put pressure on debtors to pay, in order to have their names removed from the registry. In the case of debtors who seek credit, this may be an effective incentive.

England maintains a register of County Court judgments.[58] In Germany a registry of judgments is kept for debtors who have been subject to an interrogation, and the information gained from the interrogation about their assets is thus made a matter of public record.[59] Information on debtor's assets is thus available to subsequent creditors. It spares the creditors and enforcement agents the time and expense of repeating the interrogation. In fact, subsequent creditors must allege a change in debtor's assets to conduct an interrogation if there is already one on record, an example of how extensive public records can simplify later procedures. German debtors can remove their names by satisfying judgment creditors; it is an incentive to pay or settle. In Sweden, there is a registry that includes all judgment debtors that is available to enforcement agents to assist them in execution.

4. Other Third Party Interests

The Council of Europe Recommendation suggests that enforcement procedures should "clearly define the rights. . . of . . . third parties including. . . their rankings and entitlements to monies recovered and distributed amongst claimants." Many third party objections in Macedonia appear to be by family members claiming a legal right. For family interests, such as a husband or wife's interest in a house, etc., there should be clear legal guidelines that dictate the respective rights, such as in the family law or the inheritance law. For those without a legal basis for a claim, such as a family relation, a lack of records should settle the matter. No proof, no objection.

Currently, in the Enforcement Law, third parties have the right to object throughout the procedure, however, it is not limited by the requirements for the third party to establish their claim. The types of claims that can be made, such as ownership right in property, through deed or some legal ownership, should be set forth. Then, the type of proof necessary to substantiate the claim, if it is not provided for elsewhere in the law, should also be set forth—i.e. appropriate public records. The property rights of legal relations such as a husband or wife or a sibling should be set forth in the family and inheritance law, if it is not already. If it is case-specific, such as in the award of property in a particular divorce, the third party who is objecting should be required to produce the property award or evidence of an ongoing proceeding that did not start after the commencement of the enforcement proceeding.

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[58] Kennett, *The Enforcement of Judgments in Europe,* page 113.
[59] Kennett, *The Enforcement of Judgments in Europe,* page 105.

Once established, ownership rights should be required to be registered in the appropriate registry. Rights such as the right to payment of alimony can be listed in a register of judgments, described above. Registration of property interests will allow an enforcement agent to quickly and easily determine the rights of other people in the debtor's assets.

For all property interests that can be listed in the pledge registry, cadastre or other public record, those whose interests are not listed should not be allowed to interfere in the sale of an asset. To facilitate this, judgments and interim measures to enforce them should be listed as security interests in the appropriate registry when they have already resulted in an attachment of the property, and result in priority in order of recordation. For this Article 267 of the Enforcement Law should be amended.

Though currently the cadastre is not complete, it will be completed. The right to produce evidence other than that from the cadastre should be allowed only for properties that are not registered in the cadastre. As the cadastre grows, the number of properties for which proof of interest is not readily available will shrink. The laws governing property recording should be expanded to formalize all real property.

Third parties should be required to set forth their exact ownership interests, with documentation, in order for the objection to be sustained. For example, for a spouse, a divorce decree with the property settlement that shows an interest in the asset, or evidence that such rights are in the process of being adjudicated, should be required. Proofs by third parties should be carefully set forth in the law, as carefully as the executive title is described in the beginning of the law.

I. Auction Procedure Improvements

Part of the reason auctions fail in Macedonia is the state of the economy and resulting lack of buyers with capital. However, some procedural improvements may improve outcomes. First, the minimum bid should not be set at fair market value. The appraisal should reflect the liquidation value, which will be a much lower value than the fair market value. Methods to conduct such valuations should be standardized, and experts should be required to follow those standards in order to avoid inconsistent, unpredictable outcomes. The minimum bid should be eliminated (it is not used in Germany), or, if it is not eliminated, the liquidation value should be considered as the lowest bid. The debt amount may also be considered an appropriate minimum bid, as it is in Germany. As the creditor is entitled to take the property for 2/3 the price in any case, and the debtor is not likely to receive less than that amount as credit toward his debt, this amount also may be an appropriate limit. Fair market value is inappropriate for a minimum bid, and will almost always result in an unsuccessful first auction. Therefore, some lower amount, closer to the liquidation value, that brings buyers but still protects the debtor from receiving too little for his asset, should be set.

J. Treat Foreigners on an Equal Footing with Domestic Litigants

Though an analysis of the enforcement of foreign judgments is beyond the scope of this paper, many conventions and treaties require that foreign judgments be enforceable in member states. Currently, in Macedonia, foreigners face obstacles to enforcing their judgments that are not faced by their domestic counterparts.

The law on ownership rights and the law on contractual pledge should be reconciled to eliminate the restriction on foreigners seizing and owning land. This will hamper foreign investors, if they know they will face substantial obstacles to seizing property to enforce a judgment, or to collect on a loan. Though establishing a local office can avoid the problem, there may be investors, particularly who are in Macedonia for one or a few transactions, or whose work is regional and not specific to Macedonia, for whom establishing a local office proves costly enough to deter their investment. Moreover, the growing trend toward free movement across borders is not enhanced if the movement requires establishment of an office. The law should be changed to treat foreign creditors and domestic creditors equally. Eventual EU membership will require such equal treatment.

K. Educate the Public

The public, including business people, lawyers, and ordinary citizens should be educated on how the system works. They should be educated on their rights, the function of public registries, and the procedure for enforcement of judgments. More informed participants will lead to greater efficiency.

L. Empirical Research

Empirical research in the area of judicial reform involves collecting solid data on the nature of cases and the way they are resolved in the judicial system. The importance of empirical research in shaping legal reform efforts is beginning to be understood, and has a solid basis in recent literature.[60] In a recent study conducted by the World Bank in Mexico, the reasons that were "commonly understood" to delay the enforcement of judgments: debtor appeals, bias toward defendants in the judiciary, and others, were not borne out by a study of the particular cases.[61] The study also revealed that the types of cases, and nature of litigants, i.e. whether amounts were large or small, litigants were individuals or businesses, had an impact on the outcome of an enforcement case.

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[60] Linn Hammergren, *Uses of Empirical Research in Refocusing Judicial Reforms: Lessons from Five Countries*, 2003, World Bank. *Mexico The Juicio Ejecutivo Mercantil in the Federal District Courts of Mexico: A Study of the Uses and Users of Justice and Their Implications for Judicial Reform*, Poverty Reduction and Economic Management Unit, Latin America and the Caribbean, World Bank, June 22, 2002. For further reading on the subject, see www.worldbank.org/publicsector/legal/empiricalresearch.htm.

[61] *Mexico The Juicio Ejecutivo Mercantil in the Federal District Courts of Mexico: A Study of the Uses and Users of Justice and Their Implications for Judicial Reform*, Poverty Reduction and Economic Management Unit, Latin America and the Caribbean, World Bank, June 22, 2002.

In order to be sure that the focus on improving the system for enforcement of judgments in Macedonia emphasizes the appropriate issues, it is essential that empirical research be conducted on the files of enforcement cases. The conclusions set forth should be tested not only for their accuracy, but to determine to which population of cases they may be attributed. For example, service of process may be a much larger problem when the debtor is an individual rather than a business, and the amount of the claim may have a significant impact on the motivations of the creditor and resistance of the defendant. If court involvement in utility bill enforcement is indeed minimal, and they burden the court, as shown by an empirical study, routine utility cases may be better removed from enforcement courts. The findings of the empirical research should be used to emphasize the appropriate type of reform, and the appropriate amount of reform resources that should be allocated to different types of claims.

IV. Conclusion

Macedonia's Enforcement Law, and the basic enforcement procedure as written, are relatively sound, analogous to other systems. It is in the implementation that problems occur. The main recommendations made are for changes to the system, rather than just amendments to the law. Empowerment of enforcement agents and judges in their better-defined, separate roles, to promote improved implementation, is crucial. Empirical studies on court data to verify the assumptions for reasons for delay are also strongly urged. The report provides the assumptions that need to be tested.

The report provided is just a beginning. Reform is a continuous process. Some initiatives will be successful, some will not. New ideas can be developed from initiatives that work, as well as those that do not work.